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No. 130.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PETITIONERS,

VS.

BEN TERTE, JUDGE OF THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY, MISSOURI, RESPONDENT.

STATEMENT OF THE CASE.

The respondent contends that the petitioners have failed to make a fair, accurate and complete statement of the case pursuant to Rule 25 of this court. The facts show that under decisions of this court they have no right to the writ.

Transcript of Record and Brief Untimely Served.

The papers in this case were filed June 3, 1931, but copies of the transcript of record, petition and brief were not served upon respondent until July 15, 1931.

Issues Made in the State Court.

The suit was instituted in the Circuit Court of Jackson County, Missouri, it being a court of general jurisdiction and having cognizance of such actions. The petition of the plaintiff alleges a joint cause of action against both defendants for injuries sustained by him while working for said defendants in and about the repair and operation of an interlocking plant and signal device at Pueblo, Colorado, owned by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as "Santa Fe" (R. 5). Plaintiff was working under the orders of the Denver and Rio Grande Western Railroad Company, hereinafter referred to as "Rio Grande," but was doing work for both defendants (R. 5, 6, 7, 8, 9). Because of the negligent acts of both defendants, jointly concurring, he was injured. *Petitioners do not contend, in any papers filed by them, that joint liability does not exist against the defendants.* Summons was served upon the Santa Fe in the manner provided by the law of Missouri (no question is raised about the validity of the service of process, as such, on that defendant). Writ of attachment and summons was issued against the Rio Grande and service was had upon H. F. Kleine

as *general agent* in charge of the commercial office of said company in Jackson County (R. 13).

Service was also had upon the Rio Grande by attaching and garnishing the freight credits and money due it in the hands of other railroad corporations (R. 12-14).

The Rio Grande filed, in the state court, its motion to quash the writ of attachment and summons and service thereof and to dismiss for want of jurisdiction, wherein it alleged, among other things, that it never did own or operate any railroad in Missouri; that the witnesses to the facts and circumstances involved in the action reside outside of the State of Missouri "and each of said witnesses resides either in the States of Colorado, Utah, or New Mexico" (R. 19); that the trial of the case in Missouri would unreasonably obstruct interstate commerce in which said defendant is actually engaged in said States of Colorado, Utah, and New Mexico; that the attachment of its property would likewise unreasonably burden interstate commerce; that plaintiff neither at the time he was injured, nor at any other time, was a *bona fide* resident of Missouri; that Kleine, the agent upon whom the summons was served, was merely a *soliciting agent* and had no authority to do any kind of business other than soliciting. The Santa Fe filed a similar motion with similar allegations. However, it alleged that it was engaged in carrying on business in Missouri.

To the motion of the Rio Grande, the plaintiff filed his answer and affidavit wherein denial was made, under oath, of the allegations contained in de-

fendant's motion to quash except the corporate existence and its operation of railroads, etc. Said verified answer specifically alleged:

1. Joint liability existing against both defendants.

2. That plaintiff is a *bona fide* resident of Missouri and material and important witnesses are residents of Missouri and that other witnesses live in various other states, namely: Utah, New Mexico, Colorado, and elsewhere.

3. That said defendant had for a long time kept and maintained two principal offices in Missouri for the purpose of carrying on and doing railroad business in the state—one of said offices in St. Louis, and the other in Kansas City, and that Kleine (upon whom service was had) was the general agent for that defendant and had been authorized by said defendant to do any and all necessary acts in connection with transportation of freight and passengers by defendant into Missouri; that defendant maintains in its office in said state a complete set of books and records appertaining to the movement and disposition of freight into Missouri and that the powers, rights, duties and obligations of said Kleine extend beyond the powers of any mere soliciting agent but involve a general representive capacity; said defendant pays property taxes upon the property owned by it and kept within the state, to the State of Missouri.

Verified answer and denial was likewise filed to the motion of the Santa Fe. Upon the issues thus

made, the jurisdictional question was presented to the state court for trial and in support of the motions of defendants, the verified motions were offered and in addition thereto the affidavit of Pyeatt, president of the Rio Grande, in which he deposed that plaintiff had been a resident of Pueblo, Colorado, from April or May, 1927, until August 20, 1930 (his injury occurring December 26, 1929), when he moved to Trenton, Missouri. Other statements in the affidavit are generally supportive of the allegations in the motion.

In opposition, the plaintiff offered his verified answers to said motions and affidavit, and the deposition of General Agent Kleine. The affidavit of plaintiff's attorney made for plaintiff established that plaintiff, during his entire lifetime, had been a *bona fide* resident of Missouri except for a period of temporary absence while working for defendants in Colorado; that he was born and raised and now lives in Grundy County, Missouri, where his parents do now and for many years have resided; that a joint cause of action exists against both defendants; that the witnesses whose testimony is necessary to prove plaintiff's case, reside in Missouri, Colorado, Utah, New Mexico, and elsewhere, and are not confined in the State of Colorado; that at least six of plaintiff's witnesses reside in Missouri; that all of the witnesses and the only witnesses who could be used in the defense of the case by the Rio Grande are the same witnesses necessary to the defense of the case by the Santa Fe; that plaintiff is wholly disabled from engaging in any occupation and is unable to make a livelihood and

has no means of support except by the aid of his relatives, and to require him to go to the State of Colorado and there institute and prosecute an action against the defendants, would be burdensome and unjust and would require such an outlay of money as would prevent him from obtaining justice (R. 31, 32, 33).

The deposition of General Agent Kleine (R. 55-62 inclusive), shows him to be general agent for the Rio Grande and in charge of the office of said company, which is maintained in Kansas City, having acted for the defendant in that capacity for five years. Said defendant pays rent for three offices, which it maintains in Kansas City, and said offices have been continuously maintained for more than ten years. Four employees of said company are employed at said office and their salaries are paid by said defendant. The company pays taxes, both state and city, on its office furniture, to Kansas City and the State of Missouri. From the Kansas City office information is given to shippers and consignees concerning the arrival and delivery of the shipments or any information as to their whereabouts and things of that sort. This is usual and customary and is a part of the business. At said office a complete record is kept of all freight shipments coming into this territory for tracing purposes. The Rio Grande also maintains an office in St. Louis, Missouri, and communications pass between the Kansas City and the St. Louis office and other offices in respect to transportation of freight and passengers from Colorado into Missouri, and oc-

casionally upon instructions from the company, General Agent Kleine will look after invalids or distinguished persons or other passengers upon their arrival at the station in Kansas City. "Q. And that, of course, is a part of your railroad business, isn't it? A. Yes" (R. 62).

Upon the issues raised by the pleadings and the evidence the state court determined the question of jurisdiction against the defendants.

QUESTIONS PRESENTED.

Respondent denies that petitioners have correctly stated the important questions presented by the record, and avers that the questions properly presented are:

1. Does not the State of Missouri, through its legally constituted courts, have the inalienable right, under powers retained by said state, to assume jurisdiction of a controversy based upon a transitory cause of action arising in Colorado (under the Federal Employers Liability Act), brought by a *bona fide* resident of Missouri, against the Rio Grande, a railroad company engaged in carrying on interstate commerce, when it is made to appear that said railroad company is jointly liable and jointly sued with the Santa Fe, which said Santa Fe is licensed to do business in Missouri, has consented to be sued there, operates a railroad through said state, does both interstate and intrastate business in said state; when it further appears that the Rio Grande is a corporation organized under the laws of Delaware, but operating a railroad in Colorado,

Utah and New Mexico; when it further appears that the Rio Grande maintains at least two offices in Missouri (one in Jackson County where the suit was brought), and that it employes a general agent in Missouri, *whose duties are not confined to mere solicitation of business,* but who keeps a record of all freight shipments originating upon the lines of said company, and coming into said state, and whose further duty it is to trace freight shipments coming into said state and give information concerning same; when it further appears that said railroad company pays taxes to the State of Missouri, upon the property owned by it and permanently located in said state; when it further appears that service of process, according to the laws of Missouri, was had upon said Rio Grande, by service upon said "General Agent," in the manner provided by the laws of Missouri; when it further appears that the property of said Rio Grande was seized by said state by writ of attachment, and garnishment, according to the laws of said state and jurisdiction of the property of said defendant in said controversy thereby obtained; and when it further appears that witnesses material to the trial of the controversy reside in Missouri, Utah, New Mexico and Colorado, and that the witnesses necessary to the defense *do not* all reside in Colorado?

2. If the Santa Fe is properly suable in Missouri upon such a cause of action and if an unreasonable burden is not impressed upon interstate commerce by requiring it to defend such action, is an undue and unreasonable burden imposed upon interstate commerce

by requiring its co-defendant, Rio Grande, to make a joint defense against the cause of action which is jointly against both defendants, when it appears that witnesses reside in the States of Missouri, Colorado, Utah and New Mexico and are the same and only witnesses necessary in any defense presented by the Santa Fe?

REASONS FOR DENIAL OF WRIT.

I.

The Supreme Court of Missouri in holding that the Jackson County Circuit Court had jurisdiction of the controversy, in conformity with decisions of this court, properly determined:

(a) The Santa Fe, having entered the State of Missouri—having consented to be sued there—operating a railroad doing both interstate and intrastate business in said state—is properly suable in said state, by a *bona fide* resident thereof, upon a cause of action in tort arising in a foreign state.

Hoffman v. *State of Missouri*, 274 U. S. 21.
Same case, 309 Mo. 625.
Section 742, R. S. of Mo., 1929.
Railroad Company v. *Harris*, 76 U. S. 65.
Pennsylvania Fire Ins. Co. v. *Gold Issue Min. & Mill. Co.*, 243 U. S. 93.

(b) Service of process upon the general agent of the Rio Grande at the office and place of business of that defendant in Missouri is sufficient to give the Missouri court jurisdiction, *in personam*, of that

defendant—absent an unreasonable burden on interstate commerce in the prosecution of the suit.

State ex rel. Portland Cement Co. v. *Sale,* 232 Mo. 166.
Davis v. *Jacksonville Southeastern Line,* 126 Mo. 69.
New York, etc. R. R. Co. v. *Estill,* 147 U. S. 591.

(c) The attachment and garnishment of the property of the Rio Grande in Missouri is sufficient to give the Missouri court jurisdiction, *in rem,* of that defendant.

Section 743, R. S. of Mo., 1929.
Davis v. *Railroad Company,* 217 U. S. 157.
State of Missouri v. *Taylor,* 266 U. S. 200.

(d) Interstate commerce is not unreasonably burdened by requiring the Rio Grande to submit to jurisdiction in this case.

State of Missouri v. *Taylor, supra.*

II.

Jurisdiction invoked is not a violation of the Fourteenth Amendment.

State of Missouri v. *Taylor, supra.*

ARGUMENT.

I.

Jurisdiction As to Santa Fe.

(a) *The Santa Fe operates a railroad in Missouri, is licensed to do business there, has thereby consented to be sued in said state and is therefore amenable to the jurisdiction of the courts of that state.*

The action against the Santa Fe is *bona fide*. The petitioners do not question that fact. The liability of the Santa Fe to plaintiff, Curtis, is joint with that of the Rio Grande.

The plaintiff is a *bona fide* resident of Missouri, and that issue has been determined in favor of the plaintiff by the state court. Questions of fact are not reviewable on certiorari to this court (*New York Dock Co.* v. *Poznan et al.*, 274 U. S. 117).

The mere fact that the cause of action arose in a foreign state while plaintiff was residing therein does not relieve the Santa Fe of amenability to the jurisdiction of Missouri courts. The decision of the Supreme Court of Missouri in determining that the inferior court had jurisdiction of the cause as against the Santa Fe is directly in accord with the decision of this court in *Hoffman* v. *State of Missouri*, 274 U. S. 21. The analogy between the two cases is clear.

In the Hoffman case the cause of action, based upon the Federal Employer's Liability Act, arose in Kansas, where the employee, whose death ensued as

a result of the tort, resided in Kansas, and where the administrator of his estate also resided. The action was brought in Missouri against the railroad company which was licensed to, and was doing business in Kansas and subject to the jurisdiction of the Kansas courts. Objection was made to the prosecution of the action in the Missouri court on the ground that to require the railroad company to bring its witnesses from Kansas into Missouri to defend the case would constitute an unreasonable burden on interstate commerce. The Circuit Court of Pettis County, Missouri (place where the action was commenced), refused to entertain jurisdiction of the case upon the grounds of which objection was made. Upon application for mandamus at the relation of the administrator, to compel the Circuit Court to take jurisdiction, the Supreme Court of Missouri (*State ex rel. Foraker* v. *Hoffman, Judge,* 309 Mo. 625), held that the action was properly maintainable in Missouri. Upon writ of error from that decision, this court held that the state court had jurisdiction of the action.

It is true that in the Hoffman case the defendant railroad company was incorporated under the laws of Missouri. However, that feature does not distinguish it from the case at bar for the reason that the Santa Fe has been admitted to do business in the State of Missouri—is licensed therein as a foreign corporation—and consequently subject to all rights, remedies and obligations of a domestic corporation. Section 742, R. S. Mo. 1929 (quoted in appendix). Can it be that the mere fact that the action, based upon a

tort occurring in a distant state, prosecuted in the state where the railroad company is incorporated (as in the Hoffman case), and which does not constitute an unreasonable burden on interstate commerce, would on the other hand, unreasonably burden interstate commerce if prosecuted in the courts of a state wherein the railroad company is admitted to do business and is actually engaged in both interstate and intrastate commerce although not incorporated there? Will this court promulgate such a rule of law?

It was early recognized in the case of *Railroad Company* v. *Harris*, 12 Wallace 65, 79 U. S. 65, that a foreign railroad corporation entering a state and having a line of railroad there is subject to the jurisdiction of the courts of that state, although there was no express consent by the corporation to be sued in that particular case in that state. The court, however, held that by building a railroad into the state, the corporation impliedly consented to be sued there.

The objection to the prosecution of the action against the Santa Fe on the ground that it would constitute an unreasonable burden on interstate commerce, is answered by the fact that the Santa Fe has consented to be sued in Missouri, and in all of the cases relied upon by petitioners, lack of jurisdiction was predicated upon the absence of consent to be sued within the state. This court in *Pennsylvania Fire Ins. Co.* v. *Gold Issue Min. & Mill. Co.*, 243 U. S. 93, has directly held that the consent of the foreign corporation to be sued within a state upon a cause of action arising outside of the state is to be implied from the act of

appointing an agent upon whom service of process may be had within such state.

When the Santa Fe undertook the operation of its trains within the State of Missouri and obtained its license to do business in said state it became accountable to the service of process under the laws of Missouri and to the jurisdiction of Missouri courts. Section 4598, R. S. Mo. 1929, (quoted in appendix), requires the foreign railroad corporation to appoint and designate an agent within the State of Missouri upon whom the service of process may be had. The Supreme Court of Missouri has directly held that foreign railroad corporations are suable in Missouri in an action brought by a non-resident on a cause of action under the Federal Employer's Liability Act arising in another state (*Bright* v. *Wheelock*, 323 Mo. 840, 20 S. W. (2d) 684; *Shaw* v. *Chicago & Alton R. Co.*, 314 Mo. 123, 130, 282 S. W. 416; *Wells* v. *Davis*, 303 Mo. 388, 261 S. W. 58; *State of Missouri, ex rel. Foraker* v. *Hoffman*, 309 Mo. 625, 274 S. W. 362). In the case of *Bright* v. *Wheelock, supra,* the Missouri Supreme Court further held that it is the duty of the Missouri courts to take jurisdiction of such cases, and that said courts do not have discretion to refuse to entertain jurisdiction in such cases as held in the case of *Douglas* v. *Railroad Company*, 279 U. S. 377.

If the Hoffman case, *supra*, by this court, has any value as *ratio decidendi*, it is to determine that in future litigation involving essentially the same facts, this court will in those cases apply the same rule of

law and arrive at the same conclusion as in the Hoffman case.

Under the decisions of this court, it appears that no unreasonable burden is placed upon interstate commerce by requiring the Santa Fe to submit to the jurisdiction of Missouri courts.

Jurisdiction As to Rio Grande.

(b) *Service of process upon the General Agent of the Rio Grande at the office and place of business of that defendant in Missouri, is sufficient to give the Missouri court jurisdiction, in personam, of that defendant—absent an unreasonable burden upon interstate commerce in the prosecution of the suit.*

This question is one which involves solely the construction placed upon the Missouri service statutes by the Supreme Court of Missouri, without regard to whether or not such service in this particular case is an unreasonable burden on interstate commerce.

In *State ex rel., Texas Portland Cement Co.* v. *Sale,* 232 Mo. 166, and *Davis* v. *Jacksonville Southeastern Line,* 126 Mo. 69, the Supreme Court of Missouri held service such as here obtained upon General Agent Kleine, sufficient to confer jurisdiction over the person of defendant. It would seem that the Supreme Court of Missouri inferentially held the service to be good in this case by the denial of the writ of prohibition. It certainly held such service good in *Michigan Central R. Co.* v. *Mix,* 278 U. S. 492. This court has never denied the right of a state court to construe its service statutes, absent questions relating to due process and interstate commerce. In fact, the service statutes

of Missouri in such cases have been construed by the court to give jurisdiction in *New York, etc. R. R. Co.*, v. *Estill*, 147 U. S. 591, and in *Pennsylvania Fire Ins. Co.* v. *Gold Issue Min. & Mill. Co., supra.*

Obviously, the service, as such, upon General Agent Kleine is sufficient to give the Missouri Court jurisdiction, *in personam*, of the Rio Grande.

(c) *The attachment and garnishment of the property of the Rio Grande, in Missouri, is sufficient to give the Missouri court jurisdiction, in rem, of that defendant.*

Section 743, R. S. Mo. 1929 (quoted in appendix), provides that any corporation, incorporated by any other state or county, and having property in Missouri, shall be liable to be sued and such property subject to attachment, as individuals, residents of other states, and having property in Missouri, are liable to be sued, and their property subject to attachment.

This court in *Davis* v. *C. C. & St. L. R. Co.*, 217 U. S. 157, held that jurisdiction can properly be obtained over the property of a non-resident railroad corporation on a transitory foreign cause of action by the attachment of the property of such defendant. In the Davis case, a resident and citizen of Illinois brought suit in Iowa against the defendant, an Ohio corporation, on a cause of action arising in Illinois. The defendant railway company was not doing business in Iowa. Jurisdiction was obtained by the attachment, and garnishment of traffic balances and other property of the defendant in Iowa. This court held that jurisdiction was thereby obtained, *in rem*, upon the de-

fendant in Iowa, as against the objection that such attachment and garnishment contravened the provisions of the interstate commerce act.

(d). *Interstate commerce is not unreasonably burdened by requiring the Rio Grande to submit to jurisdiction in this case.*

The facts, as shown by the record in this case, deny the assertion that interstate commerce would be impressed with an unreasonable burden by requiring the Rio Grande to defend the joint action in the Missouri court.

The material facts are—joint liability of the defendants—legal service of process upon both defendants—the absence of unreasonable burden on interstate commerce as to the prosecution of this suit as against the Santa Fe—the diversity of residence of the witnesses—the character of the business done by General Agent Kleine in his representative capacity for the Rio Grande—and the submission of the Rio Grande to the sovereignty of Missouri by the payment of taxes on its property permanently located and used in the state.

It would indeed seem incongruous with former decisions of this court, and with reason, to assert that interstate commerce would not be impressed with an unreasonable burden by requiring the Santa Fe to submit to the jurisdiction of the Missouri court in this case, but that it would be an unreasonable burden on interstate commerce to require the Rio Grande to sit at the same counsel table and make the same defense with the same witnesses as required of the Santa Fe.

This court has held:

> "The fact that the business carried on by a corporation is entirely interstate in character does not render the corporation immune from the ordinary process from the courts of the state. *International Harvester Co.* v. *Kentucky*, 234 U. S. 579. *The requirements of orderly, effective administration of justice are paramount*" (italics supplied).
>
> *Davis* v. *Farmers' Co-op. Equity Co.*, 262 U. S. 312, l. c. 316.

To hold that Curtis may continue his action against the Santa Fe in the Missouri court and yet be required to pursue the Rio Grande in a *separate* suit in Colorado or *Delaware*, would nullify the legal aphorism voiced in the italicized portion of the above quotation.

The case of *State of Missouri* v. *Taylor*, 266 U. S. 200, is determinative. In that case a Delaware corporation sued in Missouri a Texas railroad corporation which had no place of business in said state, and had not consented to be sued there, on three claims for damages to freight originating in Texas, one shipment of which was deliverable in Missouri where the negligence "for aught that appears" occurred in Missouri, and the other two shipments deliverable in other states where the negligence occurred. Service was obtained by garnishment of traffic balances due from connecting interstate carriers. The jurisdiction was attacked on the ground that to require the defendant to appear in the Missouri courts and defend would constitute an unreasonable burden on interstate commerce. This court, however, held:

> "* * * To require that under such circumstances, the foreign carrier shall submit to suit within a state to whose jurisdiction it would otherwise be amenable by process of attachment does not unreasonably burden interstate commerce."

It is clear that if the Missouri court had jurisdiction because of the fact that the negligence in respect to one of the shipments may have occurred in Missouri, it is equally true that the Missouri court would have jurisdiction of the instant case because of the presence of the Santa Fe in Missouri.

It is true that the plaintiff in the Taylor case, while a Delaware corporation had an office in Missouri and was considered a resident of the state, *ergo*, the Santa Fe is a resident of Missouri and this suit is being prosecuted in a state in which the Santa Fe has a residence. In this case, the inferior court has found that Curtis is a *bona fide* resident of Missouri.

It is shown, not only by the motions filed by the defendants, but by the pleadings and evidence of the plaintiff at the hearing before the state court, that the witnesses necessary in the prosecution and defense in this case do not all reside in Colorado, but also reside in Missouri, Utah and New Mexico. Can it be said that requiring the Rio Grande to take witnesses from Colorado to Missouri would constitute a greater burden on interstate commerce, either in fact or theory, than to require said defendant to bring witnesses from Utah and New Mexico into Colorado?

The Santa Fe certainly is suable in Kansas; the Rio Grande in Delaware; therefore, under the facts in this case can it be that a greater burden is placed on interstate commerce by requiring petitioners to make a joint defense in Missouri than by requiring them to make that defense in Delaware or Kansas? To hold according to petitioners' theory, as presented in the petition filed in this court, is to decide that these railroad companies are not suable in the states of their incorporation on this joint cause of action, but only

suable in the State of Colorado. This court has never expressed any such opinion, and, we undertake to say, will not usurp the functions of the legislative department of our government by the pronouncement of any such rule.

The evidence of General Agent Kleine discloses the presence of the Rio Grande in Missouri and the prosecution there of its railroad business. While it may be said that all of such business done by it in Missouri is purely interstate in character, nevertheless that fact does not render it immune from service of process in the state, as held by this court in the International Harvester case, *supra,* and other cases. It cannot be seriously contended that General Agent Kleine is a *mere soliciting agent.* He keeps the company's records of the passage of freight into Missouri; he communicates with the St. Louis office and other offices outside the state concerning the passage of freight and passengers into Missouri, originating upon his company's lines; he gives information to shippers concerning the time of arrival and other data in respect to freight shipments; he assists passengers on their arrival at the station in his territory. These acts are not isolated and disconnected with his regular duties, but according to his sworn testimony are a part of the regular business of the company, and he has been so acting in Missouri for at least five years before the institution of this suit.

Under the decisions of this court in *International Harvester Company* v. *Kentucky, supra,* and other cases, the conduct of the defendant as above epitomized certainly constitutes "doing business within the state."

The facts as outlined herein clearly distinguish this case from the cases relied upon by the petitioner, namely, *Michigan Central Railroad Co.* v. *Mix, et al.,*

278 U. S. 492, *Davis* v. *Farmers' Co-op. Equity Company,* 262 U. S. 312, and *Atchison, Topeka and Santa Fe Railway Company* v. *Wells,* 265 U. S. 101.

It clearly appears that Curtis did not move to Missouri for the mere purpose of instituting this litigation, as was inferred in the Mix case, but returned to the state of his nativity because of the helpless condition in which he was placed by the negligent acts of the defendants, and in the treatment of his case his status must be viewed as that of a *bona fide* resident of Missouri.

The attempt of petitioners to distinguish the Taylor case, *supra,* in their brief page 16, from the case at bar is impotent. This is also a proceeding *in rem* as to the Rio Grande; its property and freight balances have been attached and garnisheed and are being held subject to a final disposition of this case. The plaintiff is a resident of Missouri; while the negligence "for aught that appeared" occurred in Missouri in the Taylor case, that was true only as to one shipment; the jurisdiction of the Missouri court over the Santa Fe makes the later condition analogous.

The mere fact that a burden may be placed upon interstate commerce in requiring the petitioners to defend the action in the Missouri court does not necessarily mean, as has been repeatedly held by this court, that the burden is unreasonable.

This court should not take jurisdiction of this case on the ground that the prosecution of the action constitutes an unreasonale burden on interstate commerce, in that it controvenes Section 8, Article 1, Constitution of the United States.

II.

Jurisdiction Invoked Is Not a Violation of the Fourteenth Amendment.

In "Questions Presented" the only issue submitted by petitioners is whether the prosecution of the

action would constitute an unreasonable burden on interstate commerce. They do not there present the claim that the jurisdiction invoked is in violation of the Fourteenth Amendment, nor did they even argue this question to the Supreme Court of Missouri (see suggestions in support of writ of prohibition, R. 43 to 54 inclusive).

In the argument of that question before this court the petitioners ignore the fact that this action as to the Rio Grande is *in rem*. The inconsisteney of the position of the petitioners praying this court to decree that the writ of attachment and garnishment issued against the property of Rio Grande be declared void, and the statement on page 16 of petitioners' brief to the effect that this action is not *in rem* is too obvious for discussion. *State ex rel.* v. *Taylor, supra,* is a sufficient answer to this question.

Numerous decisions of this court cited herein, of which *State ex rel.* v. *Taylor, supra,* is one, also hold that such attachment and garnishment do not violate Sec. 1, Article XIV, Amendments to the Constitution of the United States.

The fact that the petitioners are unable to successfully distinguish the Taylor case, supra, from the case at bar is conclusively determinative on the merits of all the questions raised in this proceeding.

Conclusion.

The court is respectfully urged to refuse to take jurisdiction of this case for the reason that the decision of the Supreme Court of Missouri in refusing to grant the writ of prohibition is not out of harmony with the decisions of this court, but is in accord with the applicable decisions of this court on the questions involved.

Respectfully submitted,

CLAY C. ROGERS,
Counsel for Respondent.

APPENDIX.

Missouri Laws Relating to Foreign Corporations.

Section 742. Suits against railroads terminating opposite points in this state. All railroad corporations that own or operate roads terminating opposite to any point in this state, and which have offices or places of business in this state, shall be sued in the same manner as railroad corporations chartered by this state (R. S. Mo. 1929. For first enactment see Laws of 1858-9, p. 67, Sec. 1).

Section 743. Corporations of other states may be sued, how. Any corporation incorporated by any other state or country, and having property in this state, shall be liable to be sued, and the property of the same shall be subject to attachment in the same manner as individuals, residents of other states or countries, and having property, are now liable to be sued, and their property subject to be attached (for first enactment see R. S. 1845, p. 235, Section 22).

Section 4598. Every company incorporated for the purpose of gain under the laws of any other state, territory or country, now or hereafter doing business within this state * * * the principal officer or agent in Missouri shall make and forward to the secretary of state, with the affidavits required, a statement * * * which statement shall set out the location of its principal office or place in this state for the transaction of its business, where legal service may be obtained upon it, by serving on such agent, and also set out that if service cannot be had upon such agent on account of absence, death or inability of serving officer to find such agent, that service may be had upon the secretary of state which shall be binding upon the corporation.